

Service Date: April 6, 2007

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF The Petition of)	UTILITY DIVISION
Bonneville Power Administration)	
For Declaratory Order)	DOCKET NO. D2007.3.32
Disclaiming Jurisdiction)	

**NOTICE OF PETITION OF BONNEVILLE POWER ADMINISTRATION
FOR DECLARATORY ORDER AND OPPORTUNITY TO SUBMIT COMMENTS**

Filing with the Commission

On March 30, 2007, Bonneville Power Administration (BPA) filed with the Montana Public Service Commission (Commission) a Petition for Declaratory Order Disclaiming Jurisdiction (Petition).

Question Presented

BPA will be constructing various, as of yet undetermined, transmission facilities including system replacements, upgrades, and additions to be put into service, and primarily affecting existing transmission infrastructure ranging from 69 kV to 1000 kV (the Facilities). Some of the facilities will be located in Montana. The Facilities will be financed by a special purpose entity owner lessor (the Owner Lessor) and acquired, constructed and/or installed by BPA pursuant to a construction agency agreement between the Owner Lessor and BPA. The contemplated financing and the roles of the several participating entities is described in more detail below.

BPA seeks a declaratory ruling by the Commission addressing whether the Owner Lessor is exempt from Commission regulation as a public utility under §69-3-111, MCA. Petition, p. 5.

Additionally, BPA requests a declaratory order that §§ 69-3-101; 69-3-102 and 69-3-111 of the Montana Code Annotated do not apply to the Owner Lessor. Petition, p. 6. BPA seeks a declaratory ruling that the Owner Lessor in the proposed lease financing is exempt from the definition of “public utility” under § 69-3-101, MCA, and is therefore not subject to Commission jurisdiction under § 69-3-102, MCA. Petition, p. 9.

Processing of Declaratory Ruling Request

The Commission has adopted the Attorney General’s Model Procedural Rules governing declaratory ruling requests. *See* ARM § 38.2.101 and ARM §§ 1.3.226 through 1.3.229. BPA’s Petition will be processed under the aforementioned ARM provisions as well as § 2-4-501, MCA.

A copy of BPA’s filing is posted on the Commission’s web site, www.psc.state.mt.us. The Commission hereby gives Notice of this Petition and invites interested persons to submit comments upon the matter posited by BPA. Any such statements must be received by the Commission by close of business on May 2, 2007. Pursuant to ARM § 1.3.227(4)(c), the Commission does not contemplate convening a hearing in this docket unless good cause is shown for conducting a hearing.

Background

The BPA Petition sets forth the following information.

Petitioner. Bonneville Power Administration is an agency of the United States government. It is a federal power marketing administration that markets wholesale and interstate electrical transmission services. It operates electrical power transmission facilities in the Pacific Northwest, including facilities within the State of Montana.

Projects. As described above, BPA will be undertaking certain, as of yet undetermined, transmission construction projects in Montana and elsewhere in the Pacific Northwest. The Facilities will be put into service over time and all Facilities will be used exclusively by BPA to provide interstate transmission service and will not be available for use for bundled retail service. While the Facilities will not be in support of distribution service, it is possible that certain facilities lower than 69 kV may be financed in cases of voltage step-ups of generation and station service to generating stations. The Facilities will be constructed, installed and/or acquired for the purposes of enhancing Northwest transmission grid (Grid) reliability, ensuring compliance with

mandatory reliability standards, enabling the integration of new generation into the Grid and managing Grid congestion. The Facilities will be constructed or installed on real property or real property easements or similar rights held by BPA on land that is owned by a variety of parties, both private and governmental.

Financing. As described above, the Facilities will be financed by a special purposes entity, the Owner Lessor. The Facilities will be owned by the Owner Lessor, special purpose entity Northwest Infrastructure Financing Corporation II, a Delaware corporation which will be formed expressly for the purpose of arranging for the acquisition and financing of the Facilities.

All of the capital stock of the Owner Lessor will be owned by JH Holdings, not individually but acting solely in its capacity as Trustee under a trust agreement between J. H. Management Corporation (JHM), a Massachusetts corporation, as grantor, and JH Holdings Corporation, a Massachusetts corporation (JHH), as trustee. All of the capital stock of JHM and JHH will be owned by The 1960 Trust, an independent charitable support organization qualified under § 501(c)(3) of the Internal Revenue Code and operated for the benefit of Harvard University.

The Owner Lessor will initially finance the acquisition and construction of the Facilities through one or more bank loans. The Owner Lessor's sole source of funds to repay the loans will be payments made by BPA under the lease of the Facilities to BPA.

Owner Lessor and BPA. The Owner Lessor will not engage in any business other than arranging for the acquisition and financing of the Facilities. The Owner Lessor and BPA will execute a master lease that will govern and incorporate from time to time separate individual lease commitments between BPA and the Owner Lessor for related Facilities (collectively, the Lease). Under the Lease, the Owner Lessor will lease its undivided interest in each of the Facilities to BPA at the time each such Facilities is acquired, installed and/or constructed. Pursuant to the Lease, BPA will acquire a leasehold interest in and possession of the Facilities from the Owner Lessor; the term of the Lease will be seven (7) years from the date that the master lease and the first lease commitment are executed.

BPA will agree in the Lease to operate and maintain the Facilities in the same manner as it operates and maintains its other transmission facilities. The Owner Lessor will have no operating responsibilities or control rights with respect to the Facilities under the Lease or any

other agreement. The Lease will not impede the ability of BPA to transfer operational control over the Facilities to a regional transmission organization.

BPA asserts that during the term of the Lease, the Owner Lessor will have a mere passive interest in the Facilities. The Owner Lessor will own the legal title to the Facilities, but BPA states that it will have dominion and control over the Facilities during the Lease term. BPA further asserts in the Petition that the Owner Lessor and/or its affiliates will not be in the business of producing, selling or transmitting electric power, either from the Facilities or otherwise.

At the conclusion of the Lease, BPA will have the following options: (a) purchase each Facility for \$10.00, (b) renew the Lease for a term of one year for a nominal annual rental payment or (c) remove the Facilities at its own expense, or (d) execute a new lease if and to the extent the Owner Lessor assigns the Lease to another passive owner. At the expiration of the Lease term, the Owner Lessor would not reacquire the Facilities; rather, the Owner Lessor would have its interests in the Facilities terminated in the event BPA purchases or removes the Facilities, would merely retain its passive interest in the event BPA renews the Lease, or would assign its interests to another passive owner.

BY THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chairman

DOUG MOOD, Vice Chairman

BRAD MOLNAR, Commissioner

ROBERT H. RANEY, Commissioner

KEN TOOLE, Commissioner